

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Robyn West,

Complainant,

vs.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

Citizens for Responsible Government,

Respondent.

The above-entitled matter came on for an evidentiary hearing on December 12, 2012, before a panel of three Administrative Law Judges: Jeanne M. Cochran (Presiding Judge), James Kohl, and Gary Mesna. The hearing record closed on December 12, 2012, at the conclusion of the hearing.

R. Reid LeBeau II, Attorney at Law, Jacobson Buffalo P.C., appeared on behalf of Robyn West (Complainant).

John M. Huberty, Attorney at Law, Huberty Law Firm, appeared on behalf of Citizens for a Responsible Government (Respondent).

STATEMENT OF THE ISSUES

1. Did the Respondent violate Minn. Stat. § 211B.04 by failing to prominently include a disclaimer on campaign signs substantially in the form required?
2. If so, what penalty is appropriate?

The panel concludes that the Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04 by failing to have the required disclaimer visible on two campaign signs. The Complainant failed to establish that the disclaimer was not substantially in the form required. The Panel concludes that a civil penalty of \$25 is appropriate.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

FINDINGS OF FACT

1. The Complainant, Robyn West, was the incumbent candidate for the Anoka County Board of Commissioners for District 3 in the November 2012 election.¹ Ms. West's opponent in the race was Dan Sanders. Ms. West was re-elected with approximately 58 percent of the vote.²

2. Respondent Citizens for Responsible Government, Inc. (CRG), is a Minnesota registered corporation that engaged in independent expenditures on behalf of six candidates. CRG supported Dan Sanders in the Anoka County Commission District 3 race.

3. William Erhart is the director of CRG.³

4. In August of 2012, Mr. Erhart, on behalf of CRG, ordered 50 campaign signs in support of Mr. Sander's candidacy. The signs were approximately 4' x 8' and stated: "Dan Sanders for County Commissioner." All of the signs included the following disclaimer: "Prepared and Paid for by Citizens for Responsible Government, 1207 Constance Blvd., Ham Lake, MN 55304."⁴ The disclaimer ran along the bottom of the campaign sign in small print.

5. Before posting the campaign signs throughout the district, CRG decided to frame the signs with a narrow strip of wood to make them sturdier. Patrick LeBlanc Jr. and his father, Patrick LeBlanc Sr., framed the majority of the signs. Because the disclaimer ran along the bottom of the signs, they were careful to fit the wood frame above the disclaimer to ensure the disclaimer was visible.⁵

6. Ms. West first noticed the signs in support of Mr. Sanders when she was driving around the district in August of 2012. Ms. West was curious to see who had prepared and paid for her opponent's signs. She pulled off the road and walked up to a sign and noticed the disclaimer identifying CRG at the bottom of the sign below the wood frame.⁶

7. As more signs were posted throughout the district during the campaign, Ms. West noted whether the disclaimers were visible on the signs. At some point, Ms. West discovered that the disclaimer on a sign located in Blaine at 119th Street and Radisson was completely covered by the wood framing.⁷ Ms. West later discovered another sign where the wood framing partially obscured the disclaimer.⁸

¹ District 3 includes most of the cities of Blaine and Spring Lake Park.

² Minnesota Secretary of State's website election results.

³ Testimony of William Erhart. Erhart Affidavit at ¶ 1.

⁴ Complaint Exs. B and D1-D3; Respondent's Exs. 1-5.

⁵ Testimony of Erhart; Patrick LeBlanc Jr. and Patrick LeBlanc Sr.

⁶ Testimony of Robyn West.

⁷ Testimony of West; Exs. D1-D3.

⁸ Testimony of West; Ex. 11.

8. Ms. West filed this Campaign Complaint on October 22, 2012. Following the probable cause hearing, Mr. Erhart went to the sign located at 119th Street and Radisson. The disclaimer was completely covered by the wood frame as alleged. To correct the problem, Mr. Erhart wrote the disclaimer onto the wood frame with a marker. The location of the other sign with the partially covered disclaimer had not been disclosed at the probable cause hearing.⁹

9. Periodically during the campaign, Patrick LeBlanc Jr. would repair Sanders campaign signs that had been damaged by wind or vandalism. Other than the one sign at 119th Street and Radisson, he did not see any other sign where the frame covered the disclaimer.¹⁰

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, defines “campaign material” to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”

3. The Respondent’s campaign signs in support of Mr. Sanders are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. Minn. Stat. § 211B.04, as amended in 2010, provides in relevant part, as follows:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the committee,(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the committee,(address), in support of(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

⁹ Testimony of Erhart; Exs. 18 and 19.

¹⁰ Testimony of LeBlanc Jr.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to(insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.¹¹

5. The burden of proving the allegation in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.04 is a preponderance of the evidence.¹²

6. Two of Respondent's 50 campaign signs in support of Dan Sanders did not substantially comply with the disclaimer requirement contained in Minn. Stat. § 211B.04. Because the disclaimers on these two signs were covered by wood frames, they were not prominently included on the campaign material within the meaning of the statute.

7. The Complainant has established by a preponderance of the evidence that Respondent violated Minn. Stat. § 211B.04(a) with respect to these two campaign signs.

8. The Complainant has failed to establish by a preponderance of the evidence that the Respondent violated Minn. Stat. § 211B.04(d) by not including an additional disclaimer stating in substance that "this publication is not circulated on behalf of any candidate."

9. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

¹¹ Minn. Stat. § 211B.04; Minn. Laws 2010 ch. 397, § 15. The amendment is applicable to campaign material "prepared and disseminated" on or after June 1, 2010.

¹² Minn. Stat. § 211B.32, subd. 4.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.04, Respondent Citizens for Responsible Government shall pay a civil penalty of \$25 by February 28, 2013.¹³

Dated: December 17, 2012

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Presiding Administrative Law Judge

s/James Kohl

JAMES KOHL
Administrative Law Judge

s/Gary Mesna

GARY MESNA
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

¹³ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul MN 55164-0620.

MEMORANDUM

Campaign material is defined, in part, to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election ...”¹⁴ The campaign signs prepared and disseminated by Citizens for Responsible Government on behalf of Mr. Sanders’ candidacy meet that definition of “campaign material” and were required to “prominently include” a disclaimer substantially in the form provided in Minn. Stat. § 211B.04(a) and (b).¹⁵ The purpose of the disclaimer requirement is to “identify who or what committee prepared, disseminated and paid for the campaign material.”¹⁶

The record established that CRG disseminated 50 signs on behalf of Mr. Sanders’ candidacy throughout Anoka County District 3. All of the signs stated “Dan Sanders for County Commissioner” and all included the following disclaimer: “Prepared and paid for by Citizens for Responsible Government, 1207 Constance Blvd., Ham Lake, MN 55304.” The disclaimer ran along the bottom of the sign in small print. The record also established that, prior to posting the signs, CRG members or volunteers nailed a thin wood frame around each sign. As a result of the wood framing, the disclaimers on two signs were partially or completely covered. The Panel concludes that, by inadvertently covering the disclaimers on two signs with wood framing, CRG violated Minn. Stat. § 211B.04 (a) and (b) by not prominently displaying the disclaimer on these signs within the meaning of the statute.

The Complainant also argues that, because the signs were prepared by an independent expenditure group (CRG), they should have also included a disclaimer that stated, “this publication is not circulated on behalf of any candidate” as provided in Minn. Stat. § 211B.04(d). The Panel finds Complainant’s argument to be misplaced and unavailing. Subpart (d) applies to campaign material “not circulated on behalf of a particular candidate,” such as voters’ guides or issue-oriented publications. It is not, as the Complainant seems to suggest, a blanket requirement for all campaign material financed by independent expenditures. The campaign signs at issue in this case were circulated on behalf of a particular candidate – Dan Sanders. The fact that the signs were prepared and disseminated by a group acting independently of Mr. Sanders does not bring them within the requirements of subpart (d).

The Panel concludes that the disclaimer on the signs appropriately and substantially complied with the form required by Minn. Stat. § 211B.04(b), and that the Respondent was not required to also include the disclaimer provided in subpart (d). As a result, the Complainant has failed to show that CRG violated § 211B.04(d).

Finally, the Respondent again raised the argument that the disclaimer requirement is unconstitutional. As stated in the Probable Cause Order, neither an

¹⁴ Minn. Stat. § 211B.01, subd. 2.

¹⁵ Minn. Stat. § 211B.04; Minn. Laws 2004 ch. 293, art. 3, §§ 1 & 2: See, *Kalil v. Knutson*, OAH Docket 3-6302-16119-CV (Probable Cause Order) (Aug. 31, 2004); *Hansen v. Stone*, OAH Docket 4-6326-16911-CV (Findings, Conclusions, and Order) (Oct. 28, 2005).

¹⁶ *Hansen v. Stone*, OAH Docket No. 4-6326-16911 (Oct. 28, 2005).

administrative law judge nor an administrative agency has authority to declare a statute unconstitutional on its face.¹⁷ The Panel notes only that while the disclosure requirements in § 211B.04 were found to be unconstitutional by the Minnesota Court of Appeals in *Riley v. Jankowski*, the U.S. Supreme Court held in *Citizens United v. FEC*,¹⁸ that federal disclaimer provisions place no significant burden on First Amendment rights. Following that decision, the Minnesota Legislature amended Minn. Stat. § 211B.04 effective June 1, 2010 to apply to all campaign material prepared and disseminated on or after that date.¹⁹

Having found Respondent violated Minn. Stat. § 211B.04(a) and (b) with respect to the two signs that had the disclaimer covered, the Panel concludes that imposition of a civil penalty in the amount of \$25 is appropriate. The record established that the violation was inadvertent and the Complainant failed to show that it had any impact on the election. Moreover, once Mr. Erhart was made aware of the location of one of the offending signs, he promptly took measures to correct the sign by writing the disclaimer on the sign's frame. The location of the other sign was not disclosed until the evidentiary hearing, which took place after the election and after all of the signs had been taken down.

J.M.C., J.K., G.M.

¹⁷ G. Beck, Minnesota Administrative Procedure § 11.5 (2d ed. 1998). See, e.g., *Neeland v. Clearwater Memorial Hospital*, 257 N.W.2d 366, 368 (Minn. 1977); *Petterssen v. Commissioner of Employment Serv.*, 306 Minn. 542, 543, 236 N.W.2d 168, 169 (Minn. 1975); *Starkweather v. Blair*, 245 Minn. 371, 394-95, 71 N.W.2d 869, 884 (1955); *In the Matter of Rochester Ambulance Service*, 500 N.W.2d 495 (Minn. App. 1993).

¹⁸ 558 U.S. 50 (2010).

¹⁹ See Laws of Minnesota 2010 Chapter 397.